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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 842

PAN-AMERICAN LIFE INSURANCE COMPANY,
Petitioner,

v.

ROLANDO MENENDEZ-BUTANA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE DISTRICT COURT OF APPEAL
OF FLORIDA, THIRD DISTRICT

JAMES A. DIXON
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PAN-AMERICAN LIFE INSURANCE COMPANY,
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Petitioner prays that a writ of certiorari issue to review the judgment of the District Court of Appeal of Florida, Third District. This judgment affirms a summary final judgment for respondent and holds that certain laws of the Republic of Cuba are not binding on Cuban citizens.

OPINIONS BELOW

The opinion of the District Court of Appeal of Florida, Third District is reported in 163 So.2d 767 and is attached hereto as Appendix A. The order of the Supreme Court of Florida denying certiorari is not yet reported and is attached hereto as Appendix B.

JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. Section 1257(3). The decision of the Third District Court of Appeal was rendered on May 19, 1964, and did not become final until October 8, 1964, when the Florida Supreme Court entered its order denying certiorari on January 6, 1965, Mr. Justice Douglas entered an order extending the time for filing this petition to and including January 21, 1965.

QUESTIONS PRESENTED FOR REVIEW

Two questions are presented by this record. They are:

1. May the Courts of this country hold invalid a law promulgated by a recognized foreign sovereign (the Republic of Cuba) which restricted the rights of its nationals to whom money is owed to receipt of payment only in Cuba and only in Cuba pesos, without a special permit from the National Bank of Cuba?

2. May the Courts of this country hold invalid a law (and an implementing executive resolution) of a recognized foreign sovereign, which expropriated the Cuban assets of an American life insurance company doing business there, and substituted the Cuban State as the obligor on outstanding insurance policies, at least in so far as the rights of Cuban nationals are concerned?

THE STATUTES AND DECREES INVOLVED

The Statutes, Executive Agreement and Decrees involved are:

(1) Cuban Law No. 568 of September 29, 1959.

The pertinent text thereof is set forth at A. 5, 22-24, 28. (all citations herein preceded by "A" refer to the certified copy of appellant's appendix used in the Third District Court of appeal below.)

(2) Cuban Law No. 851 of July 6, 1960, and Resolution No. 3 of October 24, 1960, promulgated in pursuance of Law No. 851. The pertinent text thereof is set forth at A. 8-17.

STATEMENT OF THE CASE

This action was tried in the Circuit Court of Dade County, Florida, by respondent as the insured in a policy of insurance issued by Pan-American Life Insurance Company in Cuba in 1941.

The policy was originally payable in dollars.

On January 1, 1959, the government of which Fidel Castro was and is Premier came into power. A few days later, the United States extended diplomatic recognition to that Government, which has continued to this day.

LAW NO. 568

On September 29, 1959, the Republic of Cuba adopted Law No. 568, mentioned above. The text, in Spanish and English, was introduced in evidence in the trial court, (A. 36-66). An experienced Cuban lawyer, testified that under this law it was a felony for any Cuban national to make or receive payment of a debt thereafter becoming payable anywhere except in Cuba, or in any currency except Cuban pesos, without a special permit from the Na-

tional Bank of Cuba. This law also made it a felony for a Cuban national to have credits set up for him in a foreign nation, without the specified permit. (A. 5, 22-24, 27-30)

The plaintiff is and was at all times a national of Cuba and did not have the required permit. (A. 7, 36)

These facts raised the first of the questions presented stated above. This question was first raised in the trial court in the answer filed by the defendant. (A. 4-7). The issue was thereafter raised at each subsequent stage of the proceedings below.

The effect of the lower court rulings is to hold Law No. 568 invalid and of no effect upon the rights of Cuban nationals, and to deprive the American company of a defense properly available to it under Cuban law.

It is believed that this is, in effect, a decision denying the application of the Act of State doctrine, in circumstances in which this Court for many years has held it applicable.

LAW NO. 851 AND RESOLUTION NO. 3

Law No. 851 was promulgated on July 6, 1960. It shows on its face that it was in retaliation against the reduction of the Cuban sugar quota by the United States. It is the same law involved in the case of Banco Nacional de Cuba v. Sabbatino, et al, 11 L. Ed. 2d 804.

Law No. 851 authorized the issuance of subsequent resolutions of intervention and expropriation against United States concerns and Cuban concerns subject to

American control. Resolution No. 1 under this law is involved in the Sabbatino case. The present case involves Resolution No. 3 thereunder.

Resolution No. 3 was promulgated on October 24, 1960. It starts off with a long recital of the reasons for its issuance. Section 1 then proceeds to decree the intervention and expropriation of a long list of businesses, broken down into groups according to the nature of their business. In group XX are listed numerous insurance companies, including Pan-American Life Insurance Company. The concerns in this group were assigned for administrative purposes to the Social Security Bank, which was authorized to appoint an administrator. Two days later, the administrator so appointed appeared at the Havana branch office of Pan-American and at gun-point took possession of the office, its records and the key to the safe deposit box in which its securities and reserves against its Cuban liabilities were kept.

Resolution No. 3 went further than expropriation. In Section 2, it provided, among the other things, that the Cuban State was substituted as obligor upon the outstanding liabilities of the expropriated concerns. The plaintiff's claim to benefits under the policy herein involved was among these liabilities.

In the trial court, the defendant offered the testimony of a Cuban lawyer who stated that the effect of this law and resolution was to terminate the liability of Pan-American to the plaintiff and to confine the plaintiff, a Cuban national, to his rights against the Republic of Cuba under Section 2. His testimony was uncontradicted. (A. 27-30)

The trial court, as stated above, rejected the defendant's contentions based on Law No. 851 and Resolution No. 3. The effect of the holding was that the law and resolution were ineffectual to accomplish the result expressed in Section 2 and confirmed by the testimony of the Cuban lawyer. The holding deprived the defendant of a defense afforded it under Cuban law.

This question was raised in the answer, by the introduction of the Spanish and English texts of the legislation, by the testimony of the Cuban lawyer, by the motion for new trial and by assignment of error on appeal.

It is believed that this is a decision denying the application of the Act of State doctrine in circumstances in which this Court has for many years held the doctrine applicable. As such, it is a decision of a Federal question of substance in a way probably not in accord with applicable decisions of this Court.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT AND BRIEF ARGUMENT IN SUPPORT THEREOF

1. This case is equally as important in the field of international relations as the Sabbatino case. This case represents the other side of the coin under examination in Sabbatino. This case involves the effect of Cuban expropriation of American companies and their outstanding liabilities to Cuban nationals in the United States.

Sabbatino involved the application of the Act of State doctrine to the territorial sovereignty of Cuba. This case

involves the application of the Act of State doctrine to the personal sovereignty of Cuba over its nationals.

Pan-American Life alone had outstanding more than 6000 policies issued through its Havana branch. It is impossible to know how many of these policy-holders or beneficiaries are among the hundreds of thousands of Cubans now resident in the United States. It is known that there are many of these policies presently in litigation, and more to come. There are about twenty such suits pending the State and Federal courts in Miami alone. Others have been filed in Jacksonville, New Orleans, Galveston, Shreveport, Raleigh, Newark, and San Juan, Puerto Rico.

One lawyer in Miami says he has two hundred more ready to be filed and one other American company is informed that several hundred more are available for filing in the New York city area alone. One Cuban lawyer is known to have run advertisements in Spanish-language papers in San Juan and Miami offering his services in the collection of policy benefits.

The pending suits involve all kinds of policy claims—death benefits, cash surrender values, annuities, endowments, as well as declarations that the companies must accept premiums to keep policies in force and pay benefits upon future demand. Some cases are in State Courts, others in the Federal courts.

All of these cases basically are to be decided upon questions of Federal law. The decision of these Federal questions should be uniform throughout the country and free from the vagaries of decisions by courts of differing judicial systems. The only way such uniformity can be

achieved is by a decision of this Court. If it is adverse to the companies, they will undoubtedly pay their debts. If it is favorable to the companies, the decision of this Court will put an end to the impending flood of litigation. In either event, there will be an enormous saving of money, legal manpower and judicial labor.

2. The effect of the decision in this case is in conflict with numerous decisions of this Court applying the Act of State doctrine to the acts of a foreign sovereign then or later recognized diplomatically by this country. These are Oetjen v. Central Leather Co., 246 U.S. 297; Underhill v. Hernandez, 168 U.S. 250; American Banana Co. v. United Fruit Co., 213 U.S. 347; Shapleigh v. Mier, 299 U.S. 268; U. S. v. Belmont, 301 U.S.324; U. S. v. Pink, 315 U.S. 203, and most recently, Banco Nacional de Cuba v. Sabbatino.

Sabbatino clearly held that the application of the Act of State doctrine is a Federal question. The state court in this case has decided the question in a way almost certainly not in accord with the decisions of this cause.

CONCLUSIONS

It is respectfully submitted that this petition for a writ of certiorari be granted.

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APPENDIX A

PAN AMERICAN LIFE INSURANCE COMPANY,

Appellant,

v.

ROLANDO MENENDEZ BOTANA,

Appellee.

No. 63-339

District Court of Appeal of Florida.

Third District.

May 19, 1964

Appeal from Circuit Court, Dade County; William A. Herin, Judge.

Dixon, DeJarnette, Bradford, Williams, McKay & Kimbrell, Sam Daniels, Miami, for appellant.

Kelner & Lewis, Miami, for appellee.

Before BARKDULL, C.J., and CARROLL and HENDRY, JJ.

PER CURIAM.

Appellee has filed a petition for rehearing and upon rehearing granted, the cause was re-argued and reconsidered. We are now of the view that the opinion and judgment of this court filed on April 10, 1964 (not reported) should be vacated and withdrawn, and the judg-

ment of the circuit court affirmed on the authority of Pan American Life Insurance Company v. Raij, Fla.App. 1963, 156 So.2d 785, and Pan American Life Insurance Company v. Recio, Fla.App.1963, 154 So.2d 197.

Accordingly, the previous opinion and judgment of this court is hereby vacated and withdrawn, and the judgment of the circuit court appealed from will now stand affirmed.

It is so ordered.

APPENDIX B

IN THE SUPREME COURT OF FLORIDA

JULY TERM, A.D. 1964

THURSDAY, OCTOBER 8, 1964

CASE NO. 33,516

PAN AMERICAN LIFE INSURANCE COMPANY,
a Louisiana corporation, doing business in the
State of Florida,

Petitioner,

vs.

ROLANDO MENENDEZ BOTANA,

Respondent.

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari upon the transcript of record and briefs to review the order of the District Court of Appeal, Third District of Florida, in said cause bearing date May 19, 1964 and the record having been inspected, it is ordered that said Petition be and the same is hereby denied.

A True Copy

TEST:

SID J. WHITE
Sid J. White
Clerk Supreme Court.

(SEAL)

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RESPONDENT'S BRIEF

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RESPONDENT'S BRIEF

ARGUMENT

An examination of the cases,

1. Pan American Life Ins. Co. v. Recio, 84 S. Ct. 1908, 377 U.S. 990,

2. Pan American Life Ins. Co. v. Raij, Case No. 33062, 1964,

3. Pan American Life Ins. Co. v. Lorido, 84 S. Ct. 1132, 1905, 376 U.S. 973, 378 U.S. 554, and

4. Pan American Life Ins. Co. v. Ajuria, 84 S. Ct. 1922, 378 U.S. 582,

when compared with the instant case reveals the following:

(a) The insurance policy in each of the five cases is substantially identical.

(b) Petitioner's Petition For A Writ of Certiorari raises identical questions.

(c) Substantially the same argument, verbatim, is made and the same cases are cited.

(d) The same attorneys represent the same petitioner.

Accordingly, the respondent can see no useful purpose in further argument.

CONCLUSION

There appears to be no ground for granting a writ of certiorari. The petition appears to have been filed merely for delay. Pursuant to United States Supreme Court Rule 56, reasonable damages should be awarded respondent.

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

MILTON KELNER

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copy of the foregoing brief was mailed to James A. Dixon, 900 Dade Federal Building, Miami, Florida 33131 and Sam Daniels, 1414 duPont Building, Miami, Florida 33131, Attorneys for appellees, by mail this 26 day of January, 1965.

MILTON KELNER

Milton Kelner